

BakerHostetler

Baker&Hostetler LLP

45 Rockefeller Plaza
New York, NY 10111

T 212.589.4200
F 212.589.4201
www.bakerlaw.com

July 15, 2016

Edward J. Jacobs
Direct dial: 212.589.4674
ejacobs@bakerlaw.com

VIA ECF AND ELECTRONIC MAIL

Honorable Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 723
New York, New York 10004-1408
Bernstein.chambers@nysb.uscourts.gov

Re: Adv. Pro. No. 10-04538 (SMB); *Irving H. Picard v. James B. Pinto Revocable Trust U/A dtd 12/1/03, et al.*
Adv. Pro. No. 10-04588 (SMB); *Irving H. Picard v. Amy Pinto Lome Revocable Trust U/A/D 5/22/03, et al.*

Dear Judge Bernstein:

We are counsel to Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated SIPA liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the estate of Bernard L. Madoff. We write under Local Bankruptcy Rule 7007-1(b), to update your Honor regarding a discovery dispute in the above proceedings, which was rescheduled for a telephonic conference on July 27 at 3 pm.

On June 6, 2016, we wrote to your Honor regarding Defendants’ deficient and overdue responses to the Trustee’s discovery requests (Adv. Pro. No. 10-04538, Dkt. No. 50; Adv. Pro. No. 10-04588, Dkt. No. 52). On June 9, defense counsel filed a declaration, stating that their “plan was to complete discovery responses by June 30 . . .” (Adv. Pro. No. 10-04538, Dkt. No. 51; Adv. Pro. No. 10-04588, Dkt. No. 53). Based on this representation, we agreed to adjourn a telephonic conference set for June 15 until July 27.

While defense counsel provided email status updates on June 16, 17, 22, 24, 29, and July 7 (Exhibits A-F hereto), to date, Defendants have not cured any of their discovery deficiencies. Interrogatories (**109 days overdue**) and Requests for Production

Honorable Stuart M. Bernstein
July 15, 2016
Page 2

(99 days overdue) have still not been answered. None of the deficiencies in the responses to Requests for Admission have been corrected.

On June 24, rather than completing discovery responses as “plan[ned]” pursuant to their June 9 declaration (Adv. Pro. No. 10-04538, Dkt. No. 51; Adv. Pro. No. 10-04588, Dkt. No. 53), counsel reported for the first time that “in order to answer/respond to the Trustee’s discovery [they would] need forensic accounting” (Exhibit D). On July 7, counsel reported a “delay in discussing the matter with [their] forensic accounting expert,” but noted that they “have the bulk of non expert information and will be able to provide [] discovery responses as soon as [they] receive the expert[’]s report” (Exhibit F). He now claims that he is “pushing to have [expert] work product by the end of July” (see Exhibit G).

This is not a matter of expert discovery. Defendants have not responded to a single Interrogatory or provided a single document in response to the Trustee’s Requests for Production. They have failed to fully answer basic Requests for Admission. Defendants are not entitled to withhold responsive information and documents.

Additionally, our April 29, 2016 letter to counsel (Exhibit E to the Trustee’s June 6 letter) noted Defendants’ obligation to obtain and produce responsive documents maintained by third parties on their behalf. One such person is named Sidney Kaplan.¹ On May 2, 2016 – over two months ago – we suggested that defense counsel and Mr. Kaplan’s counsel work together to meet Defendants’ discovery obligation. Defense counsel “agree[s] that [responsive, non-privileged] documents in Mr. Kaplan’s possession . . . are documents [the Trustee] may properly seek from [his] clients” (see Exhibit G). Yet he now claims that he cannot produce them until Defendants put more money in his firm’s trust account (*id.*). This does not justify further delay.

We respectfully request that the Court find Defendants’ objections waived and order them to respond and produce documents.

Respectfully submitted,

/s/ Edward J. Jacobs
Edward J. Jacobs

Enclosures

¹ The Trustee has tried to independently subpoena records from Mr. Kaplan – also to no avail.

Honorable Stuart M. Bernstein
July 15, 2016
Page 3

cc: Robert M. McClay
McClay Alton, P.L.L.P.
951 Grand Avenue
St. Paul, Minnesota 55105
bob@mcclay-alton.com

Marvin C. Ingber
6705 Apache Road
Edina, Minnesota 55439-1001
mcingber@comcast.net